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Federal Communications Commission
Office of the Secretary

November 15, 2010

VIA HAND DELIVERY

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: *In the Matter of Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses or Transfer Control of Licensees*, MB Docket No. 10-56
REDACTED – FOR PUBLIC INSPECTION

Dear Ms. Dortch:

The attached report by Drs. Mark Israel and Michael Katz addresses Professor William Rogerson's November 8 supplemental report on behalf of the American Cable Association ("ACA")[1] purporting to show that the Comcast-NBCU transaction would lead to $2.4 billion in consumer based on his projections of increases in license fees that could be charged to other MVPDs for the new NBCU's programming.

Professor Rogerson's most recent analysis should be given no weight. As Drs. Katz and Israel demonstrate, Professor Rogerson's assertions are "misleading" and "rely on numbers that have been shown in the record to be incorrect." In fact, Professor Rogerson does not even reasonably implement his own methodology – based upon a more accurate application of Professor Rogerson's flawed approach, Drs. Israel and Katz calculate that the proposed transaction would result in consumer benefits of at least $290 million rather than the alleged $2.4 billion in consumer harms.

Professor Rogerson's latest report contains a number of other analytical flaws. For example, Professor Rogerson ignores data in the record on actual subscribership to NBCU networks – data that ACA and Professor Rogerson have had access to for months – and inexplicably relies on incorrect third-party estimates. As Drs. Israel and Katz show, Professor Rogerson compounds this error by substantially understating the demonstrated double

[1] *See* William P. Rogerson, An Estimate of the Consumer Harm That Will Result from the Comcast-NBCU Transaction, MB Docket No. 10-56 (Nov. 8, 2010).

marginalization cost savings that the proposed transaction will yield. In addition, Professor Rogerson ignores the empirical data from other transactions that contradict his claims about the combined entity's horizontal market power and vertical pricing effects.

In their previous reports, Drs. Israel and Katz have shown that there is substantial evidence that the proposed transaction will increase overall consumer welfare.[2] Dr. Rogerson's analysis does not undermine that conclusion. It provides no basis (nor is there a basis elsewhere in the record) for the remedies proposed by ACA in this proceeding.

Pursuant to the Protective Order[3] and Second Protective Order,[4] Comcast submits two copies of the public, redacted version of the filing. The Confidential and Highly Confidential versions are being filed simultaneously under separate cover. Parties interested in obtaining access to the Confidential or Highly Confidential versions of this filing should contact Brien Bell, Willkie Farr & Gallagher LLP, 1875 K Street NW, Washington, DC 20006, (202) 303-1164, bbell@willkie.com.

Sincerely yours,

Michael H. Hammer / BCB

Michael H. Hammer
Counsel for Comcast Corporation

Enclosures

cc: Vanessa Lemmé

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2 *See* Mark Israel and Michael L. Katz, Economic Analysis of the Proposed Comcast-NBCU-GE Transaction, MB Docket No. 10-56 (July 21, 2010); Mark Israel and Michael L. Katz, Responses to Econometrics Questions, MB Docket No. 10-56 (Oct. 25, 2010); *see also* Mark Israel and Michael L. Katz, Application of the Commission Staff Model of Vertical Foreclosure to the proposed Comcast-NBCU Transaction, MB Docket No. 10-56 (Feb. 26, 2010).

3 *Applications of Comcast Corporation, General Electric Company, and NBC Universal Inc. for Consent to Assign Licenses or Transfer Control of Licensees*, Protective Order, MB Docket No. 10-56, DA 10-370 (MB Mar. 4, 2010).

4 *Applications of Comcast Corporation, General Electric Company, and NBC Universal Inc. for Consent to Assign Licenses or Transfer Control of Licensees*, Second Protective Order, MB Docket No. 10-56, DA 10-371 (MB Mar. 4, 2010).

Professor Rogerson's Allegation of Consumer Harms from the Proposed Comcast/NBCU/GE Transaction is Incorrect and Misleading

Mark Israel and Michael L. Katz
November 15, 2010

1. Overview

On November 8, 2010, the American Cable Association ("ACA") submitted to the Commission a "new economic study" by Professor William Rogerson ("Rogerson III") that purports to show that the proposed Comcast/NBCU/GE transaction would generate $2.4 billion in consumer harm due to adverse horizontal and vertical competitive effects on the affiliate fees paid by non-Comcast MVPDs for NBCU networks.[1] In fact, Professor Rogerson's paper does no such thing. Instead, it makes a series of assertions that are largely divorced from—and often directly contradicted by—established facts in the record of this proceeding. The pervasive and central flaws in Professor Rogerson's approach lead to a projection of consumer harms that is incorrect and highly misleading.

As we discuss below:

- As in his earlier reports, Professor Rogerson presents no credible evidence that the proposed transaction would give rise to significant adverse horizontal competitive harms, and he ignores credible evidence that is contrary to his claims. Professor Rogerson's assertion that the horizontal combination of networks at issue in this transaction will lead to an increase in license fees for those networks is based entirely on anecdotes of higher prices from joint ownership of *broadcast networks* despite the fact that the combination of two broadcast networks is widely recognized to be very different than the types of combinations that would result from the proposed transaction. Professor Rogerson relies on these irrelevant anecdotes, while simultaneously ignoring empirical analysis showing no horizontal price effects for past transactions involving networks similar to those involved in the proposed transaction.
- As in his earlier reports, Professor Rogerson's vertical pricing model is based on assumptions that are unsubstantiated and/or directly contradicted by record evidence. Professor Rogerson's vertical pricing model is based on assumptions about parameter values that directly contradict evidence submitted by Professor Murphy and us. Professor

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1 William P. Rogerson, "An Estimate of the Consumer Harm That Will Result From the Comcast-NBCU Transaction," November 8, 2010 (hereinafter, "*Rogerson III*") at 3.

Professor Rogerson refers to his result as "consumer harm" despite the fact that he attempts to measure only the aggregate change in fees paid by MVPDs, which is *not* the same thing as the change in payments made by MVPD consumers, let alone the change in consumer welfare. In this memorandum, when we refer to corrected calculations based on Professor Rogerson's methodology, we use the terms "consumer harm" or "consumer benefits" to match Professor Rogerson's usage.

Rogerson relies on theses flawed assumptions while simultaneously ignoring the historical record showing lack of vertical price effects from past transactions.

- Professor Rogerson's claims with respect to the quantification of double-marginalization cost savings are false, misleading, and rely on numbers that have been shown in the record to be incorrect. For example, he bases his projections of double-marginalization savings on incorrect estimates and assumptions regarding the percentage of MVPD subscribers who receive NBCU national cable networks despite the fact that the actual data have been entered into the record. As we show below, his use of the incorrect numbers leads him to dramatically underestimate the consumer benefits of the proposed transaction. Professor Rogerson also falsely claims that a single, technical assumption that we made in quantifying double marginalization savings in our October 25, 2010 submission somehow invalidates our entire analysis.[2] He fails to admit, however, that, even if one used the version of that assumption that *minimizes* the double-marginalization savings, the estimated savings would be nearly 14 times as large as those that he calculates. Consequently, his double marginalization "analysis" should be given no weight.
- We demonstrate that, even if one were to accept Professor Rogerson's (flawed) methodology for computing net consumer welfare effects and his (incorrect) claims regarding vertical and horizontal competitive price effects, any reasonable computation of the magnitude of double-marginalization savings implies that the proposed transaction would *enhance* consumer welfare. Specifically the proposed transaction would generate net consumer *benefits* of at least $290 million over a nine-year period.

The remainder of this memorandum discusses these points in detail.

2. As in his earlier reports, Professor Rogerson presents no credible evidence that the proposed transaction would give rise to significant adverse horizontal competitive harms and he ignores credible evidence to the contrary.

In his latest report, Professor Rogerson repeats his unfounded claim that combining the Comcast RSNs with the NBC O&O broadcast stations and the NBCU national cable networks will enable the post-transaction NBCU to raise the fees charged for these networks to non-Comcast MVPDs.[3] As economic theory clearly identifies, the question of whether the horizontal combination of different networks would lead to higher prices depends on whether the networks are sufficiently close substitutes from an MVPD's point of view and whether there is a lack of other substitutes. This is an empirical question: one to which Professor Rogerson has applied no relevant data.

Professor Rogerson continues to claim that the "best available evidence" comes from assertions made to the Commission (in other proceedings) by cable operators with regard to the effects on retransmission fees when multiple broadcast stations in a given DMA are jointly owned. In

[2] Mark Israel and Michael L. Katz, "Response to Professor Rogerson's Comments on Double Marginalization," October 25, 2010 (hereinafter, *Israel/Katz Double Marginalization Response*) at 10.

[3] *Rogerson III* at 11.

particular, he quantifies horizontal price effects based on a claim by Suddenlink that joint ownership of "Big 4" broadcast stations leads to a 21.6 percent increase in retransmission consent fees.[4] However, no broadcast stations would be combined in the proposed transaction. Given that broadcast networks are surely closer substitutes for one another than are the networks at issue in this transaction, such evidence *at most* says that the price increase in this transaction will be *less than* 21.6 percent.[5]

Professor Rogerson also fails to acknowledge the evidence showing a lack of horizontal price effects in past transactions involving networks similar to those in this transaction. Specifically, in our previous submissions, we presented extensive econometric evidence indicating that prices are not significantly higher when RSNs are jointly owned with broadcast networks in a single DMA or when national cable networks are jointly owned with broadcast networks.[6] Professor Rogerson entirely ignores this evidence despite the fact that it has been closely vetted and confirmed through several rounds of sensitivity analysis.[7]

Finally, we note that Professor Rogerson's entire horizontal theory of harm is based on the claim that, if one content owner jointly negotiates with MVPDs over the license fee for Comcast RSNs and NBCU cable and broadcast networks, then that content owner will be able to command higher prices than separate content owners could obtain for those networks. Such a theory makes strong assumptions about the nature of bargaining, including, most basically, that the content owner is actually able to negotiate with the MVPD for the rights to the various networks at the same time. In making this assumption, Professor Rogerson apparently failed to check whether such joint negotiation would even be possible. In fact, in nearly all cases it would not. The contracts that most MVPDs have for Comcast RSNs and NBCU networks come up for renewal

4 William P. Rogerson, "Economic Analysis of the Competitive Harms of the Proposed Comcast-NBCU Transaction," (hereinafter, *Rogerson I*) at 15 (quoting Suddenlink Communications, "Ex Parte Comments of Suddenlink Communications in Support of Mediacom Communications Corporation's Retransmission Consent Complaint," *Mediacom Communications Corp., Complainant, v. Sinclair Broadcast Group, Inc., Defendant*, CSR No 8233-C, 8234-M, December 14, 2009 at 5); *Rogerson III* at 11-12.

5 Moreover, the description of the study contained in the Suddenlink filing raises serious doubts about its validity. It is a study of only Suddenlink's retransmission contracts, with no indication of how many "entities" owning multiple broadcast stations were examined, how many other station owners served as comparisons, or how other factors affecting prices were controlled for. In addition, the filing indicates that it compares the multi-station-entity's prices to those charged by other station owners "in all Suddenlink markets where the entity controls one or more stations." (p. 6). As such, the study does not even appear to limit its analysis to DMAs where the entity actually owns more than one station, but rather appears to be a study of the general price setting by those content owners who own multiple broadcast stations (in some markets) relative to other station owners, which says little or nothing about bargaining power in particular markets.

6 Mark Israel and Michael L. Katz, "Economic Analysis of the Proposed Comcast-NBCU-GE Transaction," July 20, 2010 (hereinafter, *Israel/Katz Reply Declaration*), ¶¶122-125; Mark Israel and Michael L. Katz, "Responses to Econometrics Questions," October 25, 2010 (hereinafter, *Israel/Katz Econometrics Response*) at 1-2.

7 On the specific topic of combining RSNs and broadcast networks, *Israel/Katz Econometrics Response* (at 1-2) responded to several questions that have been raised by the Commission staff and other economists, including Professor Rogerson. In each case, modifying our econometric specification to address the questions raised continued to show no evidence for price effects.

at different times. Hence, when its contract for a Comcast RSN comes up for renewal, an MVPD will have its access to NBCU content already under contract (and vice versa).[8] Consequently, Comcast/NBCU would not be able to leverage any alleged additional power via joint negotiation over Comcast RSNs and NBCU networks. Although, in theory, Comcast/NBCU could attempt to seek common expiration dates for future contracts, if Professor Rogerson's claims about the adverse effects of joint negotiations were correct, then MVPDs would rationally resist common dates. And in any event, any possible harms from joint negotiations could not occur for several years given current contracts. Professor Rogerson fails to account for this fact when computing the present discounted value of his alleged harms, which inflates his estimates of harm.

3. As in his earlier reports, Professor Rogerson's vertical pricing model is based on assumptions that are unsubstantiated and/or directly contradicted by evidence put in the record by Professor Murphy and us.

Forty-three and one half percent of Professor Rogerson's alleged competitive harms come from projected adverse vertical competitive effects on the prices of NBCU national cable networks. In making these projections, Professor Rogerson continues to rely on a model containing assumptions on the value of critical parameters that either are without basis or are contradicted by record evidence:

- Professor Rogerson assumes that the loss of the full set of NBCU cable networks would result in an MVPD's losing five percent of its subscribers. His sole basis for this assumed departure rate assumption is that "the bundle consisting of all the NBCU national cable networks has comparable ratings to those of the Big 4 Networks."[9] Such evidence ignores the widely recognized differences between broadcast and cable television networks and, thus, establishes nothing.[10]

- Professor Rogerson also continues to assume that, among those subscribers departing an MVPD following loss of a network, the fraction switching to Comcast (the diversion ratio to Comcast) would be proportional to Comcast's market share.[11] Notably, Professor Rogerson has not modified this assumption to account for evidence put in the record by Professor Murphy on behalf of DirecTV. Based on surveys of subscribers leaving DirecTV, Professor Murphy concluded that diversion from a DBS provider to Comcast would be **{{** **}}** percent of proportional.[12] If one looks at the most relevant

8 The schedule of contract expirations by Comcast network and MVPD is included with our backup materials. For NBCU contract dates, see *Israel/Katz Reply Declaration,* ¶ 76.

9 *Rogerson I* at 31.

10 *See* Memorandum Opinion and Order, *In the Matter of General Motors Corporation and Hughes Electronics Corporation, Transferors, and The News Corporation Limited, Transferee, For Authority to Transfer Control*, 19 FCC Rcd 473 (2004) (hereinafter, *News-Hughes Order*), ¶¶ 59-60.

11 *Rogerson III* at 8.

12 Kevin Murphy, "Response of Professor Kevin M. Murphy to Reply Report of Mark Israel and Michael L. Katz," August 19, 2010, ¶ 38.

evidence—the diversion ratio among those leaving DirecTV due to dissatisfaction with programming—the range **{{** **}}** percent.[13]

In addition to making unfounded assumptions about critical parameter values, Professor Rogerson fails to acknowledge or refute the fact that his claimed finding of significant adverse vertical pricing effects is contradicted by the historical record on pricing of national cable networks that are vertically integrated with MVPDs. For example, following its detailed review of the News Corp./DirecTV transaction, the Commission concluded that there was no evidence that loss of the national cable networks involved in that transaction would induce significant subscriber departures and, thus, no evidence that there would be significant anti-competitive, vertical price effects for national cable networks.[14] Similarly, we have presented econometric analyses of previous network/MVPD vertical integration events that show no significant increase in affiliate fees for national cable networks due to vertical integration with MVPDs.[15]

4. Professor Rogerson's claims with respect to the quantification of double-marginalization cost savings are false, misleading, and rely on numbers that have been shown in the record to be incorrect.

In a series of submissions, we have engaged with Professor Rogerson in a debate about proper computation of the double-marginalization savings that will be generated by the proposed transaction.[16] In his latest submission, Professor Rogerson appears to have accepted that: (i) computations of double-marginalization savings must account for Comcast's internalization of NBCU advertising revenues, and (ii) computations of double-marginalization savings must account for the fact that MVPD subscribers who do not currently subscribe to one or more NBCU networks, but who would choose to subscribe to those NBCU networks from Comcast post-transaction, generate double marginalization savings.[17]

Professor Rogerson (imperfectly) accounts for NBCU advertising revenues by assuming that advertising revenues are the same size as affiliate fees, yielding a combined value of $3.12.[18] Professor Rogerson relies on this assumption despite the fact that detailed data on actual affiliate

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13 *Id.*, ¶ 33.

14 *News-Hughes Order*, ¶¶ 86, 129-130.

This conclusion has been echoed in more recent Commission determinations. See Memorandum Opinion and Order, *In the Matter of Applications for Consent to the Assignment and/or Transfer of Control of Licenses, Adelphia Communications Corporation to Time Warner Cable Inc.; Adelphia Communications Corporation to Comcast Corporation; Comcast Corporation to Time Warner, Inc.; Time Warner Inc. to Comcast Corporation*, MB Docket No. 05-192, FCC 06-105, rel. July 21, 2006, ¶¶ 167-168.

15 *Israel/Katz Reply Declaration,* ¶ 86, and *Israel/Katz Econometrics Response* at 2.

16 *Israel/Katz Reply Declaration*; William P. Rogerson, "A Further Analysis of the Proposed Comcast-NBCU Transaction," August 19, 2010; *Israel/Katz Double Marginalization Response*; and *Rogerson III*.

17 *Rogerson III* at 21-22. We say "appears" because, in his report, Professor Rogerson has changed the definitions of our Groups 1-4 in a misleading way. Compare *Rogerson III* at 22 with *Israel/Katz Double Marginalization Response* at 6.

18 *Rogerson III* at 18.

fees and advertising revenues by network have been placed in the record of this proceeding. The correct total of affiliate fees and advertising revenues is {{ }}, not $3.12.[19]

More striking is Professor Rogerson's attempt to downplay the implications of tier-switching. In his most recent submission, Professor Rogerson acknowledges that he earlier ignored the existence of MVPD subscribers who currently do not subscribe to one or more NBCU networks and that such subscribers would yield double-marginalization savings if they subscribed to NBCU networks through Comcast post transaction.[20] However, he continues to claim that the effects of such groups would be trivial.

Professor Rogerson makes two attempts to justify his refusal to recognize the existence of significant double-marginalization effects.

First, he asserts that the only possibility for significant tier switching is switching from "limited basic" to "expanded basic" and he then argues that the percentage of subscribers on limited basic is very low. Professor Rogerson attempts to support the latter claim by using a Bernstein estimate of the number of subscribers to USA (as a percentage of all MVPD subscribers) as a proxy for the actual subscribership rate to each NBCU network across MVPDs.[21] In so doing, Professor Rogerson once again ignores relevant market facts and data already in the record.

Specifically, there are two important respects in which Professor Rogerson chooses to ignore reality. First, he acts as if each MVPD offers only two tiers of service, a limited basic tier and an expanded basic tier.[22] As is obvious to anyone familiar with the MVPD industry, this is incorrect. Second, there is no sound reason to rely on Bernstein estimates when the record contains Comcast and NBCU internal data on the actual subscribership rate for each NBCU network across MVPDs.[23] These data are reproduced in Table 1 below, along with the incorrect numbers used by Professor Rogerson (for those networks on which he presented data). As is evident from the table, a substantial number of MVPD subscribers do not subscribe to each of the NBCU networks, and Professor Rogerson's estimated numbers are consistently and dramatically lower than the correct numbers. Professor Rogerson ignores the prevalence of these subscribers without offering any justification for doing so.

19 *Israel/Katz Double Marginalization Response*, Table 4 and backup materials.

20 *Rogerson III* at 22-23.

21 *Id.* at 22 and Table 10.

22 Professor Rogerson's attempt to mischaracterize MVPDs' tier structure is embedded in his redefinition of our Groups 1-4 discussed in footnote 17 above.

23 These data were submitted as Table 1 of *Israel/Katz Double Marginalization Response*.

Table 1

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Professor Rogerson's second attempt to justify his refusal to recognize the existence of significant double-marginalization effects is based on his claim that our assumption of equal switching rates by members of Groups 3 and 4 in our model of double-marginalization savings somehow invalidates our entire analysis. Such a claim is false, as we now demonstrate.

Groups 3 and 4 both contain consumers who subscribe to non-Comcast MVPDs prior to the proposed transaction and who subscribe to Comcast service tiers that provide access to NBCU programming after the transaction. The difference between the two groups is that members of Group 3 do not have access to the NBCU networks prior to switching MVPDs, while members of Group 4 do.

Economic logic and empirical evidence indicate that the within-Comcast switching rate among subscribers who change tiers but not MVPDs (*i.e.*, Comcast subscribers who currently do not receive the networks in question but who, after the transaction, would switch to Comcast tiers that offered the networks; Group 2 in our model) will be substantially larger than the switching-to-Comcast rates among subscribers to other MVPDs (Groups 3 and 4 combined).[24] In our October 25, 2010 submission, we explained why this point should be uncontroversial: In attempting to attract new subscribers to NBCU networks, Comcast has both more ability to target its own subscribers and an incentive (by Professor Rogerson's own logic) to target internal

24 The switching rate is defined as the percentage of the population corresponding to each group that would switch following a post-transaction Comcast price reduction (as opposed to the total number of switchers in each group, which also depends on the size of the underlying population corresponding to each group).

subscribers who do not currently receive the networks, rather than subscribers to other MVPDs who, as far as Comcast knows, may already receive the networks.[25] In that submission, we also presented evidence from an analogous situation, in which Comcast made identical offers for triple-play service to both Comcast customers who did not have such service and to households subscribing to rival MVPDs.[26] The results of that offering showed that, not surprisingly, the "take rate" among Comcast subscribers was **[[ ]]** the take-rate among subscribers to other MVPDs.[27]

Because this empirical evidence pins down only the switching rate (relative to Group 2) for Groups 3 and 4 *combined*, we had to make an assumption about the ratio of switching rates for Groups 3 and 4. We assumed it was equal to one.[28] As we noted, we made this assumption because "we are unaware of any convincing argument that the variation should be in one direction or the other."[29] This remains the case: Professor Rogerson provides no evidence on this issue.[30]

In any event, Professor Rogerson's criticism of our assumption of equal switching rates for Groups 3 and 4 is a red herring. We will demonstrate this fact by supposing it were the case that *no one* in Group 3 would switch following the transaction, so that *all* of the switching from other MVPDs to Comcast would come from consumers already subscribing to the network in question (Group 4). In other words, for the sake of argument, we will assume that the ratio of Group 3 switching to Group 4 switching would be zero, its lowest possible value. We consider this polar case because it represents the version of Professor Rogerson's criticism that *minimizes* double-marginalization savings.

For each of the scenarios presented in our October 25, 2010 submission, we scale up the switching from Group 4, so that the overall rate of switching from other MVPDs (relative to tier switching by Comcast subscribers) matches the original assumption for that scenario, but with all the switching coming from Group 4.[31]

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25 *Israel/Katz Double Marginalization Response* at 9-10.

26 *Id.* at 10-11.

27 *Id.* at 11.

28 *Id.* at 10.

29 It is easy to see that the relative switching rates for Groups 3 and 4 could go in either direction. Those in Group 4 currently receive the NBCU networks in question and thus may be more likely to switch in response to price breaks for these networks. However, they also have a larger set of services (and thus perhaps receive higher utility) from their current MVPD, which would tend to reduce their switching rate.

30 *Rogerson III* at 25.

31 More formally, adopting Professor Rogerson's notation, we set $\alpha_3 = g_3/h_3 = 0$. Then, for each network, we solve for the value of $\alpha_4 = g_4/h_4$ that sets *s*, the rate of switching from other MVPDs to Comcast relative to the rate of tier-switching in group 2 ($s = \left(\frac{g_3+g_4}{h_3+h_4}\right) \Big/ \left(\frac{g_2}{h_2}\right)$), equal to the assumed value of *s* for each

Table 2 presents the computed double-marginalization savings, corresponding to each of the four scenarios in Table 5 of our October 25, 2010 submission. These scenarios are defined by setting *s* (the switching rate for Groups 3 and 4 *combined* relative to the switching rate for Group 2) at either **[[ ]]** and setting *t* (the switching rate for Group 1—those households that do not subscribe to any MVPD—relative to the switching rate for Group 2) at either 0 or **[[ ]]**.[32] The only difference from our previous submission is that here we assume no switching from Group 3.[33] As seen in the table, double-marginalization savings range from **{{ }}** per subscriber per month (relative to **{{ }}** in our October 25, 2010 submission), with an average across scenarios of **{{ }}** (relative to **{{ }}** in our October 25, 2010 submission).

Although this extreme (and unjustified) version of Professor Rogerson's criticism naturally lowers our estimated double-marginalization savings, the average double-marginalization savings across scenarios remains nearly 14 times larger than the $0.09 figure that Professor Rogerson asserts without basis. In other words, Professor Rogerson's claim of significant consumer harms relies on assumed double-marginalization savings that are only *seven percent of the lowest value that can generated by varying the relative switching rates for Groups 3 and 4 in response to Professor Rogerson's criticism* of our equal-switching-rate assumption.

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scenario from our October 25, 2010 submission. In our October 25, 2010 submission we had assumed $\alpha_3 = \alpha_4$, which implies that $\frac{g_3 + g_4}{h_3 + h_4} = \frac{g_3}{h_3} = \frac{g_4}{h_4}$ and $s = \frac{g_3 h_2}{g_2 h_3} = \frac{g_4 h_2}{g_2 h_4}$.

32 *Israel/Katz Double Marginalization Response* at 11-12.

33 All tables and calculations included with our backup materials.

Table 2

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5. Using any reasonable computation of double marginalization, Professor Rogerson's framework implies that the proposed transaction is consumer-welfare enhancing.

Using correct double-marginalization calculations reverses Professor Rogerson's conclusions even with no other changes to his methodology. Specifically, updating the calculations on page 35 of Rogerson III using the conservative {{ }} estimate for double-marginalization savings yields total annual savings of {{ }} per year. Even if one were to accept all of Professor Rogerson's computed consumer harms (as we do not, for reasons including those explained above), total affiliate fee increases would be only $316.8 million per year. Hence, as seen in Table 3, accepting Professor Rogerson's methodology and his computation of consumer harms, and computing the magnitude of double-marginalization savings based on a worst case, implies that the proposed transaction would yield net consumer benefits of at least $36.1 million per year, for a net present value of at least $292.9 million in consumer benefits over a nine-year period, rather than the substantial consumer harms claimed by Professor Rogerson.

Table 3

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In addition to using the highly conservative {{ }} estimate for double-marginalization savings, the figures reported in Table 3 are conservative on many other dimensions. Most fundamentally, they use the figures that Professor Rogerson claims for horizontal and vertical harms, despite the pervasive and central flaws underlying his derivation of these figures, as detailed above. In addition, the computation of the present discounted value of benefits and harms over a nine-year period underlying the table incorporates Professor Rogerson's implicit assumption that the benefits and harms both start at the beginning of the nine-year period. In fact, although the double-marginalization benefits would begin as soon as the transaction closes, the alleged harms would all be delayed until current Comcast and NBCU carriage contracts with other MVPDs expire.[34] For example, {{

}} Contracts with other MVPDs expire at various points during the nine-year period. Hence, even if one accepted Professor Rogerson's theory of adverse competitive effects, the net present value of the alleged harms would be lower than estimated here.

In summary, both because the figure used for double-marginalization savings is highly conservative, and because Professor Rogerson has overstated the alleged harms, the net consumer benefits as calculated by Professor Rogerson's methodology should be substantially higher than the $292.9 million reported in Table 3.

34 We have consistently been careful to account correctly for the timing of contracts in our analysis. See *Israel/Katz Reply Declaration*, ¶ 76.